

APPENDIX A

The Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part (54 Stat. 1178, 1179, 1183-1186; 50 U. S. C. App. (1940 Ed.) 510, 540-554):

ARTICLE I

GENERAL PROVISIONS

SEC. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

* * * * *

ARTICLE IV

INSURANCE

SEC. 400. In this article the term "policy" shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term "premium" shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited

shall refer to the date of admission to membership in such association; the term "insured" shall include any person who is the holder of a policy as defined in this article; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article.

SEC. 401. (1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits.

SEC. 402. The benefits of this Act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of \$5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and

a premium was paid thereon before the date of approval of this Act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy.

SEC. 403. The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans' Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every rejection or approval.

SEC. 404. When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of \$5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of \$5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall

immediately notify the insurer and the insured in writing of such selection.

SEC. 405. No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: *Provided*, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force.

SEC. 406. Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein *provided*, for the benefits of this article, shall render to the Veterans' Administration a report, duly verified, setting forth the following facts:

First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons, during the preceding calendar month.

Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article, which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

Fourth. A computation of the difference between the total amount of defaulted premiums

therein reported, and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default, upon policies in respect of which the Veterans' Administration has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference.

SEC. 407. The Administrator of Veterans' Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof, and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article.

SEC. 408. The certificate so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid or any loan or settlement is

made the written consent of the Veterans' Administration must be obtained.

SEC. 409. In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.

SEC. 410. If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.

SEC. 411. At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.

SEC. 412. The balance in favor of the insurer in each case shall be certified by the Adminis-

trator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.

SEC. 413. This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium.

SEC. 414. This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.

* * * *

ARTICLE VI

ADMINISTRATIVE REMEDIES

* * * *

SEC. 604. This Act shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: * * *

APPENDIX B

The 1942 Amendment of the Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part (56 Stat. 769, 773-776; 50 U. S. C. App. 541-548):

SEC. 13. Article IV of such Act is amended to read as follows:

ARTICLE IV

INSURANCE

* . . . * . . . *

SEC. 401. The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed \$10,000. If an insured makes application for protection of policies on

his life totaling insurance in excess of \$10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed \$10,000, and a policy which affords the best security to the Government shall be given preference.

SEC. 402. Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured, the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy.

SEC. 403. The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

SEC. 404. No dividend or other monetary benefit under a policy shall be paid to an in-

sured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article.

SEC. 405. In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs.

SEC. 406. Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan.

on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

SEC. 407. The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. The Administrator of Veterans' Affairs shall report annually to the Congress on the administration of this article.

SEC. 408. (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the ap-

proval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions.

APPENDIX C

38 U. S. C. 454a provides:

§ 454a. *Assignability and exempt status of payments of benefits.*

Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.

From and after October 17, 1940, this section shall be construed to prohibit the collection by set-off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (a) any person other than the indebted beneficiary of his estate; or (b) any beneficiary or his estate except amounts due the United States by such beneficiary or his estate by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary or his estate or to his dependents as such; *Provided, however,* That if the benefits be insurance payable by reason of yearly renewable term or of United States Government life (converted) insurance

issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits. *Provided further,* That nothing in this amendatory Act shall be construed to modify or repeal section 687b of this title.

APPENDIX D

THE SCHEME OF THE STATUTE

1. *The 1940 Act.*—The broad purpose of the Soldiers' and Sailors' Civil Relief Act of 1940¹ was to protect servicemen from harassment and injury in connection with their civilian affairs during their period in uniform. Congress recognized that, because of their reduced income and absence from civilian life, servicemen might be unable to meet the financial obligations they had incurred before being called into military service. To free them from worry about these matters so that they could then devote their entire energies to the military needs of the Nation, the Act provides for "the temporary suspension" of the enforcement of specified civil liabilities of servicemen.² It does not wipe out those liabilities; it simply defers or suspends them so that the serviceman "might have an opportunity when he returns to be heard and to take measures to protect his interests."³ The Act confers wide discretionary powers upon the courts to

¹ The 1940 Act was virtually a reenactment of the Soldiers' and Sailors' Civil Relief Act of 1918, 40 Stat. 440, 441, enacted during World War I. See *supra*, pp. 51, 58-59.

² § 100, *supra*, p. 77; see also H. Rept. No. 3001, 76th Cong., 3d Sess., p. 2 (1940); H. Rept. No. 181, 65th Cong., 1st Sess., p. 3 (1917) (reporting on the bill which later became the Soldiers' and Sailors' Civil Relief Act of 1918).

³ H. Rept. No. 3001, *supra*.

grant stays in proceedings and transactions involving servicemen; it virtually bars default judgments against them; it tolls statutes of limitations; it defers tax obligations; and it has specific provisions to safeguard servicemen with regard to contracts which impose a continuing liability, such as leases, mortgages, installment purchases, etc.

Insurance contracts were regarded as being in the latter category.⁴ Congress recognized that, due to the exigencies of the service, persons who held private life insurance policies before entering the armed forces might not be able to make remittances for premium payments within the time required by policy provisions. Failure to pay these premiums almost invariably would result in the lapse or forfeiture of their policies.⁵ To avoid such forfeiture or lapse, the Act provided that, on application of a serviceman, the United States would guarantee the payment of his premiums during the period of his military service and for one year thereafter.⁶ This, in brief, was the scheme of Article IV of the Act which related to insurance:

The protection of the Act was available only to those servicemen who filed an application both with their insurer and with the Veterans' Administration (§ 401, *supra*, p. 178). The application form required the serviceman to state specifically that the applica-

⁴ See *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H. R. 6361*, pp. 27-28.

⁵ *Ibid.*, p. 104.

⁶ That the transaction contemplated by the Act was one of guaranty is discussed at length above, see p. 25 *et seq.*, and see *infra*, p. 103 *et seq.*

tion "is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article" (*ibid.*).⁷ Upon receipt of the application, the insurer filed a report on the insurance policy with the Veterans' Administration, 38 C. F. R. (1941 Supp.) 103300, 10.3301.⁸ By receiving and filing the application, the insurer also was deemed to have consented to any necessary modification of the policy (§ 401). The Veterans' Administration then determined whether the insured and his policy were eligible for protection under the Act, and promptly notified the insured and his insurer of its approval or rejection of the application. The protection afforded was limited to certain types of life insurance policies not exceeding \$5,000 in face amount. §§ 402-404, *supra*, pp. 78-79.

The Act provided that no policy thus brought within the benefits of the Act should lapse or be forfeited for nonpayment of premiums during the insured's period of military service and for one year thereafter. § 405, *supra*, p. 80. It further provided for a monthly report by the insurer to the Government. § 406, *supra*, p. 80. Each month, every insurance company with policies under the Act's protection was to send a report to the Veterans' Administration listing, *inter alia*, the premiums defaulted during the past month, the payments of premiums which pre-

⁷ The application form is set forth in 38 C. F. R. (1941 Supp.) 10.3300, and a copy of respondent Plesha's application is reprinted in the record at 291-293.

⁸ The insurer's report concerning Plesha's policy appears at R. 294-296.

viously had been reported as in default, and a computation of the difference between the two total amounts. *Ibid.* - Every month, after verifying the amount of this "monthly difference," the Veterans' Administration was to deliver to the insurer a certificate in the amount of the monthly difference. The certificates were to bear interest at a rate to be prescribed by the Secretary of the Treasury⁹ and were to be kept by the insurance company until its ultimate settlement of account with the United States. § 407, *supra*, p. 81.

The certificates were to be held by the insurance companies "as security for the payment of the defaulted premiums with interest." And, "to indemnify it against loss," the United States was to have a first lien upon each protected policy. The insurer was forbidden from making any loan or settlement or payment of dividend on the protected policy which might prejudice the lien, and none in any event without obtaining the written consent of the Veterans' Administration. § 408, *supra*, pp. 81-82.

If the insured died while his policy was under protection, the previously defaulted premiums, plus interest at the rate provided for in the policy for policy loans, were to be deducted from the proceeds of the policy. This deduction was to be credited to the Government in the next monthly report, as premiums paid. § 409, *supra*, p. 82.

If the insured did not, within one year after the termination of his military service, pay to his insurer

⁹ The Secretary fixed the rate of interest at 3% per annum, not compounded. R. 136; 38 C. F. R. (1941 Supp.) 10.3312.

ance company all past due premiums with interest at the policy loan rate, his policy was then to lapse. In that event, the insurer was to become liable to pay the cash surrender value of the policy. § 410, *supra*, p. 82; but cf. § 408, *supra*.

One year after the Act ceased to be in force, there was to be a final accounting between each insurer and the United States.¹⁰ In that account the United States was to be credited with the sum of the cash surrender value of each lapsed policy up to the amount of the unpaid premiums with interest at the policy loan rate, and the insurer was to be credited with the total amount of its certificates with interest to the date of the account. The balance in favor of the insurer was to be paid by the United States. §§ 411, 412, *supra*, pp. 82-83.

It should be noted that in each instance in which the Act spoke specifically of the payment of past due premiums by the insured, the obligation contemplated was for the amount of his past due premiums plus interest at the rate provided for in his policy for policy loans. Thus, if he died, the defaulted premiums, with interest at the policy loan rate, were deducted from the proceeds (§ 409); if he wanted to avoid lapse of his policy after his service ended, he had to pay his insurer all past due premiums with interest at the policy loan rate (§ 410); if he failed to make such payment, the cash surrender value, up to the amount

¹⁰ The Act was to remain in force until May 15, 1945, but if the United States was then engaged in war the Act was to remain in force until six months after the termination of the war by a treaty of peace. § 604, *supra*, p. 83.

of the past due premiums with interest at the policy loan rate, was credited to the United States in settling the guaranty account with the insurer (§ 411). If the cash surrender value exceeded the sum owed by the insured, the insurer presumably was bound to pay this excess to the insured, although there is no explicit language in the Act so stating (§§ 410, 411).

The 1940 Act contained no express provision that, if the payment by the United States of the defaulted premiums pursuant to its guaranty should exceed the cash surrender value, the insured was obligated to reimburse the United States for this deficiency. On the other hand, neither did the Act state that the insured was not under such an obligation, nor was there any declaration that the payment by the United States should constitute a gratuity to the insured.

2. *The 1942 Amendment.*—In 1942, Congress removed all doubt as to the nature of the Government's payments by an amendment of Article IV¹¹ which stated explicitly that the unpaid premiums, with interest at the policy loan rate, were being guaranteed by the United States, and that

The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

¹¹ 56 Stat. 775, Sec. 406; 50 U. S. C. App. 546; *supra*, pp. 86-87.

This was one of several revisions enacted by the 1942 Amendment, all of which were said to be "for the purpose of clarification" and to "liberalize the existing law".¹² See, for fuller discussion, *supra*, pp. 63-71.

Among other things, the 1942 Amendment discarded the cumbersome "monthly difference" reporting system and the deferred settlement of account required of the insurer under the 1940 Act (see *supra*, pp. 93-94). Instead, it provided for the United States to pay the insurance company the difference between (a) the cash surrender value, and (b) the amount of the defaulted premiums plus interest at the policy loan rate; payment was made on a per policy basis when the policy lapsed. § 406, as amended, *supra*, pp. 86-87. As to policies already protected under the 1940 Act, the company could elect to settle under the simpler method of the 1942 Amendment; if it failed so to elect within 90 days after enactment of the Amendment, the old method of settlement was retained. § 408 (2), as amended, *supra*, pp. 87-88. In this case, respondents' insurer made that election and settled on a per policy basis under the new method (*supra*, p. 5).

The Amendment declared that policies already protected under the 1940 Act should continue to be entitled to the protection that Act granted and that the provisions of the earlier Act should remain in force as to such policies. § 408 (1), as amended, *supra*,

¹² S. Rept. No. 716, 77th Cong., 1st Sess., p. 3; 88 Cong. Rec. 6707.

¹³ We are informed by the Veterans' Administration that almost all insurers similarly elected to settle under the method provided by the Amendment.

p. 87. The Amendment conferred additional benefits (see *supra*, pp. 68-69) and also enlarged the period of protection against lapse, from one year following termination of the insured's military service to two years afterward. § 403, as amended, *supra*, p. 85.

APPENDIX E

THE LEGISLATIVE HISTORY OF THE 1918 ACT

1. The original draft of the 1918 Act was prepared by the War Department under the supervision of eminent attorneys headed by Dean John H. Wigmore, then serving as an officer in the Office of the Judge Advocate General. As stated in the letter of transmittal to the Congress from the Secretaries of War and of the Navy, the bill was intended "to free persons in the military service of the United States from harassment and injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation."¹ During the hearings on the bill it was emphasized that this objective was to be achieved *not* through a gratuitous discharge of civil liabilities, but rather by providing a temporary suspension of remedies which, if enforced against servicemen while they were away, might prejudice their civilian affairs. The method of the bill was to preserve creditors' rights but to suspend or postpone proceedings and transactions during the soldier's or sailor's absence, "so that he may have an opportunity, when he returns, to be heard and to take measures to protect

¹ *Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2nd Sess., on S. 2859 and H. R. 6361, p. 5.*

his interests.”² In general, the bill placed broad discretionary powers in the courts to stay proceedings and transactions involving servicemen. Covering a variety of subjects (*e. g.*, default judgments, statutes of limitations, tax obligations, etc.), the bill also contained provisions to afford protection to servicemen on “contracts which impose a continuing liability upon a soldier or sailor during his term of service. These include such contracts as those for policies of insurance, rent for dwellings, interest on mortgages * * *, and purchase of real or personal property by installment contracts calling for the payment of installments during the period of military service” (*Hearings, supra*, fn. 1, at p. 27). See *supra*, pp. 17-20, 91-92.

² *Hearings, supra*, fn. 1. Introduced in the Senate as S. 2859 on September 11, 1917, and in the House as H. R. 6110 one week later, the bills were referred to the respective Committees on the Judiciary. Testifying before the Senate Committee, Dean Wigmore stated as to the original draft: “In every one of the 8 or 10 measures calculated to relieve a specific need of the soldier or sailor * * * we stopped at suspending the remedy. In no instance, so far as I in good faith can say, is any man’s rights or property taken from him, lost, or destroyed. He is simply held back for a time in his remedy. There is a soldier going to war. The creditor comes in and we say, ‘Hold on, hold back. That man is away in the Army. He is fighting for you. Wait until he comes back. Do not jump on him while he is away. You will have every remedy back in your hands the minute that he is returned and has gotten himself together and got his uniform off.’ * * * The whole theory is simply to hold the hand. Throughout the bill, so far as I am able to see it, there is nothing more done than suspension of remedy.” *Ibid.*, p. 87. See also, *Hearings before the Committee on the Judiciary, H. of Rep., 65th Cong., 1st sess., on H. R. 6110*, at pp. 5-7.

As to life insurance, the proposed law originally prohibited the forfeiture or lapse of certain private policies held by servicemen for nonpayment of premiums falling due during their period of military service. It provided that such defaulted premiums should be charged to the policy as a loan and could be paid by the insured with interest at the policy loan rate at any time within six months after the termination of the insured's military service.³ Spokesmen for the insurance industry appeared before the Senate Committee considering the bill and vigorously objected to this feature of the bill. They asserted that it would compel the insurance companies to maintain policies in force despite nonpayment of premiums, contrary to the terms of the insurance contract; that in reality the serviceman was being given an option to pay or not to pay his defaulted premiums, as he saw fit, upon his return from war, because the bill failed to provide a consensual and enforceable obligation with reference to premiums accruing in the future; in other words, there would be no debt running from the insured to the insurer.⁴

³ § 13 of S. 2859, 65th Cong., 1st Sess.; *Hearings, supra*, fn. 1, at pp. 18-21, 31. That the bill did not contemplate the furnishing of free insurance is indicated by the fact that the section also suggested machinery under which the beneficiaries of servicemen whose premiums were in default could contact relief organizations who would render assistance in payment: *Ibid.* Dean Wigmore testified that the insurance provisions did not provide for paying the premiums but only for giving notice of default to such organizations which would then assist in making payments. See *Hearings before the Committee on the Judiciary, H. of Rep., 65th Cong., 1st Sess., on H. R. 6110*, p. 9.

⁴ They explained that under the usual contract of insurance both parties agree that the premium paid shall keep the policy

Discussion at the Senate hearings indicated a common desire by members of the Committee to afford protection of some kind with regard to servicemen's outstanding private insurance but strong opposition to providing free insurance or to forcing the companies to maintain the policies while the serviceman would have an election to pay or not to pay his defaulted premiums upon his return to civilian life. Senator Reed, one of the most active participants at the Senate Committee hearings, declared that it was "absurd" to propose that "at the end of the war the soldier shall have the option to pay or not to pay, as he sees fit. * * * I did not think it would be claimed that a thing of that kind could be done." *Hearings, supra*, fn. 1, at p. 114.⁵ Finally, after considerable discussion, Dean Wigmore suggested that these objections could be eliminated by modifying the bill so as to provide for a *guaranty* by the Government that the premiums would be paid. The Committee welcomed this suggestion and directed that he sit down

in force only until the date on which the next premium becomes due; the policyholder is not under any obligation to pay the succeeding premium; if he chooses to pay, the insurance contract remains in force until the subsequent premium becomes due, but if he chooses not to pay, the contract terminates. If the company nevertheless continued to extend insurance coverage as the bill required it to do, it was feared that the company would have no legally enforceable claim against him for future premiums because the policyholder had never requested or agreed to renewal of his contract. *Hearings, supra*, fn. 1, at p. 102 *et seq.*

⁵ It should be noted that this is precisely the result which is reached by the decision below: the insured has been held to have an option to pay or not to pay his defaulted premiums as he pleases.

with industry representatives and draft such a provision.⁶

2. Three days later, after having worked with the company representatives, Dean Wigmore reappeared before the Committee with a draft of a separate act entitled "A Bill to provide a mode of *guaranty* against lapse or forfeiture of life insurance policies held by persons in military service." Its provisions (which, with minor changes, were later enacted as Article IV of the 1918 Act and ultimately were incorporated in the 1940 Act) were substantially different from those proposed in the original bill. The latter had merely placed a flat prohibition on lapse of policies for nonpayment of premiums; the arrangement was nonconsensual and therefore, as the industry had argued, offered no assurance to the com-

* "Maj. WIGMORE. * * * I am sure I do not want the Government to pay my insurance premiums, and there must be thousands like that who do not want any favors or charities in that way. If the suspension of these forfeitures, from the point of view of Mr. McIntosh [a spokesman on behalf of the insurance companies], will impose an undue burden on the companies, why can you not get at it in that way by simply, through an act of Congress, guaranteeing them against losses? Then all of us who go on paying our policies are taken care of in their own way, and those of us who have, by inadvertence, not paid our premiums, would be taken care of, and thus not throw an undue burden on them.

"Senator FLETCHER. That is a sound suggestion.

"Maj. WIGMORE. There is no constitutional objection to that.

"Senator OVERMAN. Suppose you draw up such an amendment as that.

"Senator REED. That is a practical suggestion. Sit down with these gentlemen representing the companies and agree on a section that will carry out this suggestion." *Hearings, supra*, fn. 1, at p. 120.

⁷ Emphasis added. The full text of the draft bill is set out at *Hearings, supra*, fn. 1, at pp. 124-131.

panies that they would ever receive or even have the right to enforce the payment of premiums for the period during which the proposed law required that they keep the policies in force. The new bill, however, not only provided for a consensual arrangement, thereby furnishing a foundation for a legal claim by the insurance company against the insured for payment of defaulted premiums, but also established a firm guaranty by the Government that these premiums would be paid.* The scheme of the bill is virtually that of the 1940 Act, already described, Appendix D, *supra*, p. 91, *et seq.*

3. The revised insurance provisions were considered at subsequent hearings. *Hearings, supra*, fn. 1, at p. 123 *et seq.* Dean Wigmore testified that the new proposal met the objections of the industry. *Ibid.*

* The voluntary and consensual arrangement between the insured and the insurer is evidenced by the fact that the protection against lapse was to be available only if the insured requested it by making application for such protection to his insurance company. The application constituted the insured's consent to such modification of the contract "as is made necessary by the provisions of the Act." By receiving and filing the application, the insurer similarly consented to any necessary modification of the contract. The original application had to be sent to the insurer, and a copy to the Bureau of War Risk Insurance (the Veterans' Administration under the 1940 Act). See *supra*, p. 92 *et seq.* The law did not compel the serviceman to keep his private insurance in force; nor is there anything to indicate that the insurance company was compelled to keep the policy alive even after the serviceman had elected to do so by the filing of his application. Only when both parties to the contract agreed did the insurance policy remain in force.

* Under §§ 408-409 of the 1918 Act, bonds, rather than certificates as provided in §§ 407-408 of the 1940 Act, were delivered to the insurer by the United States "as security for the payment of the defaulted premiums with interest."

at p. 132. He agreed with Senator Overman's interpretation that under the new proposal the serviceman would be subject to a debt, for he would owe the premiums to the insurance company,¹⁰ and that if he failed to pay that debt, the Government would (*id.* at p. 134). Questioned as to whether the Government could obtain repayment from the serviceman, Dean Wigmore answered affirmatively and went on to explain that in his belief the cash surrender value of the policy, which was subject to the Government's lien, would in most instances be sufficient to recoup the expenditure.¹¹ *Id.*, at 135. He was not asked specifically and therefore furnished no direct answer to whether, in his view, the Government would be denied the right of recourse against the servicemen for any deficiency. On the other hand, he had stressed earlier that the whole approach in writing the original bill was merely to suspend remedies for a temporary period, not to deprive any creditor of his rights or to relieve any debtor of his obligations.

¹⁰ Compare the industry's objections to the original bill which failed to provide an enforceable obligation of the insured, *supra*, pp. 101-103.

¹¹ Under the new bill drafted by Dean Wigmore and the industry's representatives, insurance contracts were not eligible for the Act's protection unless they "were made and *two full years' premiums* were paid thereon before September 1, 1917" (*Hearings, supra*, fn. 1, at p. 126; emphasis added). As enacted, however, the 1918 Act limited eligibility to contracts made and on which a premium was paid before September 1, 1917; since the bill was enacted March 8, 1918, this meant the policy had to be approximately six months old. 40 Stat. 440. And this requirement was further reduced under the 1940 Act which permitted protection when the contract was "made and a premium was paid thereon before the date of approval of this Act or not less than thirty days before entry into the military service." § 402, *supra*, pp. 78-79.

See pp. 99-100 and fn. 2, *supra*. The revised insurance provisions did not change that approach; they were designed to strengthen it. Their purpose was to meet the problem of insurance contracts by creating a debt enforceable against the policyholder for the unpaid premiums, and, through the Government's guaranty, assuring payment of that debt.

Meanwhile, apart from the insurance provisions of the Civil Relief Bill initially submitted to the Congress, the House Committee found it desirable to make certain other changes. As a result, the bill was rewritten and the revised version was introduced as a new measure (H. R. 6361, 65th Cong., 1st Sess.). The separate insurance bill, which Dean Wigmore and the industry spokesmen had worked out to effectuate a governmental guaranty of payment of defaulted premiums, was, with only slight change, included as Article IV of this new bill.

Reporting the bill favorably, the House Committee on the Judiciary described the insurance Article as providing "a scheme for the Government to carry the premiums on not more than \$5,000 of life insurance of a man in military service who is unable to pay this premium." H. Rept. No. 181, 65th Cong., 1st Sess., p. 7. While the Report has no specific reference to the question of whether the servicemen will be obligated to reimburse the Government if it is called upon to pay his defaulted premiums, there are a number of indirect indications that a debt rather than a gratuity was contemplated. Thus, the Report distinguishes between the "boon" or gratuity provided under the war-risk (governmental) insurance bill

and the instant arrangement.¹² The voluntary and contractual nature of the transaction contemplated by the bill was also a subject of comment.¹³ In numerous places the relationship of the Government to the transaction was specifically termed a "guaranty."¹⁴

¹² "The insurance provisions of the bill cover an entirely separate field from the insurance provisions of the war-risk insurance bill. That bill gives new insurance to soldiers and sailors *as a boon from the Government*; this section protects rights in insurance previously bought by the soldier or sailor with his own money and already in force." H. Rept. No. 181, *supra*, at p. 7 (emphasis added). And see the earlier remarks of Senator Reed (*supra*, p. 166) that it would be absurd to give the soldier an option to pay or not pay, as he sees fit. Cf. fn. 5, at p. 102, and pp. 35-36, *supra*.

¹³ "This change in the original contract of insurance is agreed to by requiring the soldier who wishes to take advantage of the bill to make an application, signed by the beneficiary when legally necessary: When the application is filed by the company, it also accepts the change in the contract." H. Rept. No. 181, *supra*, at p. 7.

¹⁴ The report speaks of the soldier obtaining a "Government *guaranty* upon an aggregate of [not] more than \$5,000 of insurance" (*ibid.*, p. 7); and states that the "*guaranty* continues as to all premiums on accepted policies until a year after the war * * *" (*ibid.*, p. 8). Speaking of the likelihood that the Government's financial burden will not be large, the report states, "In the first place the Government only *guarantees* the payment of the premiums. If the soldier dies the insurance company will get its premiums out of the policy and the Government's *guaranty* will not be called upon. If the soldier comes back from the war he will repay the premiums if he continues the policy, and if he lets the policy lapse the Government will be subrogated to his rights. * * * In the nature of things it is impossible to say what the amount of this liability will be. But it is plain that it will be very small, especially when we remember that the *guaranty* does not apply to more than \$5,000 of insurance on any one life." *Ibid.*, pp. 8-9. (Emphasis added.)

With but minor changes,¹⁵ the bill was passed by both houses of the Congress and was enacted into law on March 8, 1918, 40 Stat. 440.

¹⁵ See H. Rept. No. 344 (Conference Report to accompany H. R. 6361), 65th Cong., 2d Sess.

APPENDIX F

The following is an extract from the Congressional Record (86 Cong. Rec. pp. 13132-13133) concerning the bill which became the Soldiers' and Sailors' Relief Act of 1940. The bill (H. R. 10338) having been read to the House, this discussion took place (emphasis added):

Mr. VOORHIS of California:

Mr. Speaker, * * * it seems to me that this bill ought to be as thoroughly understood as possible.

I do not propose to make an oration here, but I do propose to try to interpret the bill as I understand it, with the request that I be corrected as I go along.

I am afraid there are many Members of the House and there may be men who are going to be affected by the terms of this bill who are not going to understand what we are doing.

As I understand what this bill provides, it is roughly the following: It says that if a person who is drafted into the service of the country under the terms of legislation recently passed, is renting a home or purchasing a home or has some other contract on which he is liable to make payments, then he shall not be dispossessed or his family shall not be evicted or no action of that sort shall be taken without court permission during the time he is in the service or for 3 months thereafter. *I do not understand, however, that his payments are in any way forgiven to him, or anything like that. He is still liable to make the same payments at some future time as he would have to make under these circumstances.* The only thing that happens is that his family cannot be evicted

or the property cannot be taken away from him, which he is in the process of purchasing.

In the case of insurance I understand that the Government guarantees the difference between the amount of premium that the man can pay and the full amount of the premium, but that the man must repay the Government for the amount that the Government pays on his behalf during this period, at some future time.

* * * If I am wrong about any of these remarks, I want to be corrected now. I am only a layman. I am not a lawyer and I have not been on the committee, but I just made these remarks because I think it is a very important bill to many thousands of people and that Members of Congress ought to consider it carefully and that we ought to be clear in our minds as to what we are doing.

Mr. VAN ZANDT. Mr. Speaker, will the gentleman yield?

Mr. VOORHIS of California. I yield.

Mr. VAN ZANDT. Did I understand the gentleman to say that where a person has an insurance policy and is unable to meet the payments, the Government will assume that responsibility?

Mr. VOORHIS of California. Perhaps the chairman of the committee had better answer it, but my understanding is that the Government pays the difference between the amount a man is considered able to pay and the full amount of the premium, while he is in the service.

Mr. ARENDS. Will the gentleman yield?

Mr. VOORHIS of California. I yield.

Mr. ARENDS. The gentleman is correct. However, he will be issued a certificate and *he will have to pay this back*. In other words, the Government will have a lien against this man's insurance policy until *such time as the owner of the insurance policy reimburses the Government*.

Mr. VOORHIS of California. And how long does he have to pay it back? A year?

Mr. ARENDS. A year after he is out of service.

Mr. VOORHIS of California. *And during that year he must repay the Government what it has paid on his policy?*

Mr. ARENDS. *That is correct.*